

## **REMARKS**

### **Claims**

After entry of the subject amendment, claims 1-5 remain pending in the application with claim 1 in independent form. Claims 1-5 have been amended as described below. No new matter has been added to the application as a result of these amendments.

### **Claim Objections**

Claims 1-5 stand objected to for informalities, specifically the use of the phrase “characterized in that”. The Applicant respectfully disagrees with this objection, as using such a phrase is supported by 35 CFR § 1.75(e) for delineating an improvement. Nevertheless, in an effort to speed allowance of the application, the phrase has been deleted and replaced with the customary phrase “wherein”.

### **Claim Rejections under 35 U.S.C. §§ 102 and 103**

Claims 1, 2, 4, and 5 stand rejected under 35 U.S.C. §102(b) as being anticipated by Krohn et al. (U.S. Patent No. 5,787,874). Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Krohn et al. in view of Welz, Jr. et al. (U.S. Patent No. 6,247,919). Claims 1-5 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over HeaTec (European Patent Document No. EP 1 188 989 A2) in view of Saunier (French Patent Document No. 2 561 757 A).

In addition to the amendments to claims 1-5 described above, claim 1 has also been amended to include the word “controlling” and change the phrase “can be” to “is”.

The word “controlling” was incorrectly omitted from the claim as a typographical error. Full support for this amendment can be found in paragraph [0020] of the specification. The replacement of “can be” with “is” is done to correct any potential concerns regarding indefiniteness.

As the Examiner is undoubtedly aware, 37 CFR § 1.104(c)(2) states that “[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command” and that “[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.” (emphasis added) In rejecting claims 1, 2, 4, and 5 under §102(b) as being anticipated by Krohn et al., the Examiner cites only seven lines of Krohn et al. (col. 2, lines 56-62) in an attempt to show the recitations of these claims. Nevertheless, remarks as to why this rejection is respectfully incorrect are provided below. Furthermore, in rejecting claims 1-5 under §103(a) as being unpatentable under HeaTec in view of Saunier, the Examiner provides no explanation whatsoever as to the pertinence of these references and the reasoning for the rejection. As such, the Applicant cannot possibly provide an adequate response to this rejection. Therefore, it is respectfully suggested that the rejection of claims 1-5 under 35 U.S.C. §103(a) as being unpatentable under HeaTec in view of Saunier is traversed. (The Examiner is respectfully reminded that translations may be obtained from the Translations Branch of the Scientific and Technical Information Center (STIC) as outlined in § 901.05(d) of the MPEP.)

As the Examiner is also aware, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,

631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). With respect to the rejection of claim 1 as being anticipated by Krohn et al., it is respectfully suggested that Krohn et al. fails to disclose, teach, or suggest each and every element recited by claim 1.

First, claim 1 recites two valves: a main valve (35) and a flame failure device valve (17). In contrast, Krohn et al. discloses only a single valve, the “main gas valve 5”. As such, the recited claim includes an element that simply is not present in Krohn et al.

Second, claim 1 recites a control unit (8) positioned downstream of the main valve for controlling the flow of gas flowing to the main burner (33). Krohn et al. does not disclose, teach, or suggest such a control unit positioned downstream of the main valve. Instead, it appears that “main gas valve 5” of Krohn et al. alone is utilized to control the flow of gas to the main burner.

Third, claim 1 recites that a sensor (34) provides a signal to the flame failure device valve (17) to cause the flame failure device valve to assume a closed position. Conversely, Krohn et al. merely teaches that a “sensor 11” is used to prevent a burner from overheating and to maintain the burner 2 at a selected temperature. (see col. 2, lines 56-62). Krohn et al. does not disclose, teach, or suggest a sensor providing a signal to close a flame failure device valve, or any other valve.

As such, it is respectfully suggested that that the rejection of claim 1 under §102(b) has been traversed, and that this claim is allowable. Claims 2-5 are dependent, either directly or indirectly, on the novel and nonobvious claim 1, such that these claims are also allowable. Furthermore, it is respectfully noted that a related patent application was issued as Australian Patent No. 2005220312 B2 by the Australian Patent Office on September 18, 2009.

**Applicant: Blank et al.**  
**Serial No.: 10/592,002**

It is respectfully submitted that the application is now presented in condition for allowance. The fee for a three month extension of time is submitted herewith. It is believed that no other fees are due. However, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayment.

Respectfully submitted,

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**May 24, 2010**  
Date

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